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SERIES I No. 5

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

No. 2

GOVERNMENT OF GOA
Goa Legislature Secretariat

LA/F2/1923/2003

The following Bill which was introduced in the Legislative Assembly of the State of Goa on 30-4-2003 is hereby published for general information in pursuance of the provisions of Rule-138 of the Rules of Procedure and Conduct of Business of the Legislative Assembly.

The Goa Lokayukta Bill, 2003

(Bill No. 23 of 2003)

A

BILL

to provide for the establishment of the Institution of Lokayukta to inquire into grievances and allegations against public functionaries in the State of Goa and to make provisions for the appointment of the Lokayukta and Upa-Lokayukta and for the matters connected therewith.

BE it enacted by the Legislative Assembly of Goa in the Fifty-Fourth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*— (1) This Act may be called the Goa Lokayukta Act, 2003.

(2) It extends to the whole of the State of Goa.

(3) It shall come into force at once.

2. *Definitions.*— In this Act, unless the context otherwise requires—

(a) "action" means action taken by a public functionary in the discharge or purported discharge of his functions as such public functionary, by way of decision, recommendation or finding or in any other manner, and includes any omission or commission in connection with or arising out of such action, and all other expressions connoting such action shall be construed accordingly;

(b) "allegation" in relation to a public functionary, means any affirmation that such public functionary in his capacity as such:

- (i) is guilty of corruption, favouritism, nepotism or lack of integrity;
- (ii) was actuated in the discharge of his functions, by personal interests or improper or corrupt motive;
- (iii) has abused or misused his position to obtain any gain or favour to himself or to any other person or to cause loss or undue harm or hardship to any other person;
- (iv) or any person on his behalf, is in possession or has at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income, for which the public functionary cannot satisfactorily account;

(c) "Chief Minister" means the Chief Minister of the State of Goa;

(d) "Competent authority", in relation to a public functionary, means,—

- (i) in the case of the, Chief Governor.
Minister or any Member
of the State Legislative
Assembly:
- (ii) in the case of a Minister the Chief
or Secretary: Minister or
during the
period of
operation of
any procla-
mation is-
sued under
Article-356
of the Con-
stitution of
India, the
Governor.
- (iii) in the case of a Vice- the Chancel-
Chancellor of a lor of the Uni-
University: versity.
- (iv) in the case of any other the Chief
public functionary: Minister or
such autho-
rity as may be
prescribed;

(e) "complaint" means a complaint by any person (other than a *public functionary*) alleging or making allegations that a public functionary has committed acts of corruption or any other act mentioned in sub clauses (i) to (iv) of clause (b) of section 2 and shall also include a grievance

(f) "corruption" includes anything made punishable under Chapter IX of the Indian Penal Code, 1860 (Central Act 45 of 1860) or under the Prevention of Corruption Act, 1988 (Central Act 49 of 1988);

(g) "family" of a public functionary means the spouse, parents, unmarried sisters and children of the public functionary as are dependant on him or her, as the case may be;

(h) "Governor" means the Governor of the State of Goa;

(i) "grievance" means a claim by any person against a *public functionary*, falling under clause (q) (xi) or (q) (xii) of Section 2 of this Act, that he sustained injustice or undue hardship in consequence of mal administration by such *public functionary*.

(j) "local authority" means a Municipal Corporation or a Municipal Council or a Planning

Development Authority or a Township Committee or a Zilla Panchayat or a Village Panchayat or any other local self body;

(k) "Lokayukta" means the person appointed to be Lokayukta under section 3 of this Act;

(l) "Maladministration" means action taken or purporting to have been taken in the exercise of administrative functions in any case,—

(i) Where such action or the administrative procedure or practice governing such action is unreasonable unjust, oppressive or improperly discriminatory, or

(ii) Where there has been negligence or undue delay in taking such action, or the administrative procedure or practice governing such action involves undue delay;

(m) "Minister" means a member (other than the Chief Minister) of the Council of Ministers, for the State of Goa and includes a Deputy Chief Minister, a Minister of State and a Deputy Minister;

(n) "notification" means a notification published in the Official Gazette of the Government of Goa and the expression "notified" shall be construed accordingly;

(o) "Officer" means a person appointed to a civil or public service, or post in connection with the affairs of the State of Goa;

(p) "prescribed" means prescribed by the rules made under this Act;

(q) "public functionary" means a person, who is or was at any time,—

(i) the Chief Minister or a Minister of the State of Goa;

(ii) a Member of the Legislative Assembly of the State of Goa;

(iii) the President or the Vice-President or the Chairman or the Vice-Chairman or the Secretary, or the Managing Director (by whatever name called) of:—

(1) a local authority; or

(2) a Government Company as defined in section 617 of the Companies Act, 1956 (Central Act 1 of 1956); or

(3) a statutory body or Corporation or Board established by or under a statute and owned or controlled by the Government of Goa, including a co-operative society; or

(4) any other Corporation or Board or Society owned or controlled by the Government of Goa;

(iv) a member of a local authority or the Syndicate or Executive Committee of an University established by the Goa University Act, 1984 (Act 7 of 1984) or a member or Director (by whatever name called) of a body or Corporation or Board or Society referred to in item (2), item (3) and item (4) of sub clause (iii); or

(v) a member of the State Transport Authority or any Regional Transport Authority; or

(vi) the President, Secretary or Treasurer or any other office bearer of a registered trade union; or

(vii) The Chairman or Vice-Chairman or President or Vice-President or Secretary or Treasurer or any other office bearer of a recognized political party at the District or State level; or

(viii) The Chairman or Manager or Secretary or Corresponding Authority having control over the administration of a private school, whether under individual or corporate management, which receives or has received aid or grant from the Government under the Goa, Daman and Diu School Education Act, 1984 (Act 15 of 1985) or any other relevant law for the time being in force and the rules made thereunder; or

(ix) The Chairman or Manager or Secretary or Corresponding Authority having control over the administration of a private college, whether under a unitary or corporate management which is affiliated to a University in the State of Goa and which received aid or grant from the Government; or

(x) the Chairman or Manager or Secretary or Corresponding Authority having control over the administration of a private engineering college or private polytechnic, whether under a unitary or corporate management, affiliated to a University in the State of Goa or State Board of Technical Education, Goa, as the case may be, and which received aid or grant from the Government; or

(xi) an officer referred to in clause(o);

(xii) a person in the service or pay of a local authority, University, statutory body or Corporation, Society, Government Company, or other institution as is referred to in sub-clauses(iii) to (x);

Explanation:— In this clause,—

(1) "co-operative society" includes a co-operative society registered or deemed to have been registered under the Maharashtra Co-operative Societies Act, 1960, as in force in the State of Goa or any other Co-operative Societies Act in force in the State of Goa;

(2) "society" means a society registered in the State under the Societies Registration Act, 1860 (Central Act 21 of 1860);

(3) "registered trade union" means a trade union registered under the Trade Unions Act, 1926 (Central Act 16 of 1926);

(4) "public servant" means a public servant as defined in section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860);

(5) "State" means the State of Goa;

(p) "Secretary" means a Secretary to the Government of Goa and includes the Chief Secretary, an Additional Chief Secretary, a Principal Secretary, Development Commissioner, Commissioner, a Special Secretary, an Additional Secretary and a Joint Secretary or such Officer, by whatever name called;

- (g) "Upa-Lokayukta" means a person appointed to be Upa-Lokayukta under section 3.

3. *Appointment of Lokayukta or Upa-Lokayukta.*— (1) For the purpose of conducting investigations and inquiries in accordance with the provisions of this Act, the Governor shall, by order under his hand and seal, appoint a person to be known as the Lokayukta and if need be, one or more persons to be known as the Upa-Lokayukta:

Provided that the Lokayukta and/or Upa-Lokayukta shall be appointed by the Governor on the advice tendered by the Chief Minister in consultation with the Chief Justice of the High Court of Bombay and the Speaker of the Legislative Assembly or in his absence, the Deputy Speaker of the Legislative Assembly;

(2) A person shall not be qualified for appointment as the Lokayukta or Upa-Lokayukta unless he has been a judge of the High Court or is qualified to be appointed as a judge of the High Court;

(3) Every person appointed as the Lokayukta or Upa-Lokayukta, shall before entering his office, make and subscribe, before the Governor or such person appointed in that behalf by him, on oath or affirmation in the form set out here under:—

"I, A.B..... having been appointed as the Lokayukta/Upa-Lokayukta under the Goa Lokayukta Act, 2002, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will".

(4) If the office of the Lokayukta or Upa-Lokayukta becomes vacant, or if the Lokayukta or Upa-Lokayukta, by reason of absence or for any other reason whatsoever is unable to perform the duties of his office, those duties, shall, until some other person is appointed under subsection (1) and enters upon such office or, as the case may be, until the Lokayukta or Upa-Lokayukta resumes his duties, be performed,—

(a) where the office of the Lokayukta becomes vacant or where for any reason aforesaid he is unable to perform the duties of his office, by the Upa-Lokayukta or if there are two or more Upa-Lokayuktas, by such one of the Upa-Lokayuktas as the Governor may, appoint for the purpose;

(b) where the office of the Upa-Lokayukta becomes vacant or where for any reason aforesaid he is unable to perform the duties of his office, by the Lokayukta himself or if the Lokayukta so directs, by the other Upa-Lokayukta or as the case may be, such one of the other Upa-Lokayuktas as may be specified in the direction.

(5) The Upa-Lokayukta shall, while acting as or discharging the functions of Lokayukta, have all the powers and immunities of the Lokayukta and be entitled to salary, allowances and perquisite as are applicable in relation to the Lokayukta.

4. *Lokayukta or Upa-Lokayukta to hold no Office other—* (1) The Lokayukta or Upa-Lokayukta shall not be a Member of Parliament or a Member of the Legislative Assembly of any State, nor shall he hold any office of trust or profit (other than his office as the Lokayukta or Upa-Lokayukta, as the case may be), nor shall he be connected with any political party, nor shall carry on any business or practice any profession nor shall accept any assignment without prior approval of the Governor; and accordingly, before he enters upon his office, a person appointed as the Lokayukta or Upa-Lokayukta, shall,—

- (a) if he is a Member of Parliament or of the Legislature of any State, resign such membership;
- (b) if he holds any office of trust or profit, resign such office;
- (c) if he is connected with any political party, sever his connection with it;
- (d) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or
- (e) if he is practicing any profession, suspend practice of such profession.

(2) A person who has been a member of a political party at any time during the period of five years immediately preceding,—

(a) the commencement of this Act, in the case of first appointment, after such commencement; or

(b) the date on which the vacancy has arisen, in the case of any sub-sequent appointment, shall not be eligible to be appointed as Lokayukta or Upa-Lokayukta;

5. *Term of Office of the Lokayukta or Upa-Lokayukta*— (1) Every person appointed as the Lokayukta or Upa-Lokayukta shall hold office for a term of three years from the date on which he enters upon his office as Lokayukta or Upa-Lokayukta as the case may be, or till he attains the age of Seventy years, whichever is earlier:

Provided that—

(a) the Lokayukta or Upa-Lokayukta may, by writing under his hand addressed to the Governor, resign his office;

(b) the Lokayukta or Upa-Lokayukta may be removed from office in the manner provided in section 7.

(2) On ceasing to hold office, the Lokayukta or Upa-Lokayukta shall be ineligible for further appointment as the Lokayukta or Upa-Lokayukta or in any employment under the Government of Goa or for any employment under any local authority, University, statutory body or corporation, society, co-operative society Government Company, other body or corporation as is referred to in sub-clauses (iii) to (x) of clause (q) of section 2;

6. *Conditions of services of Lokayukta or Upa-Lokayukta*—(1) The Lokayukta or Upa-Lokayukta shall have the like status, shall be entitled to the same salary, allowances and pension and shall be subject to the same conditions of service, as a judge of the High Court:

Provided that, the status, salary, allowances, pension and other conditions of service of a judge of the Supreme Court or a retired judge of the Supreme Court appointed as Lokayukta or Upa-Lokayukta shall be the same as a judge of the Supreme Court:

Provided further that, if a person at the time of his such appointment is in receipt of pension in respect of any previous service, as a Judge under the Government of India or under the Government of a State, his salary in respect of service as the Lokayukta or Upa-Lokayukta shall be reduced,—

(a) by the amount of that pension, except pension received as a freedom fighter;

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension; and

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity:

Provided also that the allowances payable to, and other conditions of service of the Lokayukta or Upa-Lokayukta shall not be varied to his disadvantage after his appointment:

Provided further that the Lokayukta or Upa-Lokayukta shall not hold any other office.

(2) The expenditure in respect of the salaries and allowances of the Lokayukta or Upa-Lokayukta shall be charged on the Consolidated Fund of the State of Goa.

7. *Removal of the Lokayukta or Upa-Lokayukta*— (1) The Lokayukta or Upa-Lokayukta shall not be removed from his office except by an order of the Governor passed after an address by the State Legislative Assembly supported by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of the House present and voting, has been presented to the Governor in the same session for such removal on the ground of proved misbehavior or incapacity.

(2) The procedure for the presentation of an address and for the investigation and proof of misbehaviour or incapacity of the Lokayukta or Upa-Lokayukta under sub-section (1) shall be as provided in the Judges (Inquiry) Act, 1968 (Central Act 51 of 1968).

8. *Staff of Lokayukta*— (1) The Lokayukta shall have a Secretary and such other officers

and employees as may be determined by the Governor in consultation with the Lokayukta or Upa-Lokayukta, to assist the Lokayukta or Upa-Lokayukta in the exercise of their powers and the discharge of their functions under this Act.

(2) The conditions of service of the Secretary and other officers and employees shall be such as may be specified by the Governor.

(3) Appointment of Secretary and other officers and employees shall be made by the Lokayukta in consultation with the Upa-Lokayukta, if any:

Provided that where such appointment is made by direct recruitment, the Goa Public Service Commission shall be consulted.

(4) The rules for reservation of appointments and posts in Government service in favour of the Scheduled Castes, Scheduled Tribes and Other Backward Classes of Citizens shall, *mutatis mutandis*, apply to appointments to be made under this section.

(5) Without prejudice to the provisions of sub-sections (1), (2), and (4), the Lokayukta may, for the purpose of dealing with any particular case or class of cases, secure—

(a) the services of any officer or employee or investigating agency of the Government of Goa or the Government of India with the concurrence of that Government; or

(b) the services of any expert.

(6) The terms and conditions of service of the officers, employees, agencies and persons referred to in sub-section (5) shall be such as may be specified by the Lokayukta.

(7) In the discharge of their functions under this Act, the officers and employees referred to in sub-section (1) and the officers, employees, agencies and persons referred to in sub-section (5) shall be subject to the exclusive administrative control and direction of the Lokayukta.

9. *Matters which may be investigated by Lokayukta or Upa-Lokayukta*— (1) Subject to the provisions of this Act, the Lokayukta or the Upa-Lokayukta (where the case is allotted to him by the Lokayukta) may, either *suo motu* or on complaint made to him under section 11, inves-

tigate any allegation against any public functionary.

(2) Notwithstanding anything contained in sub-section (1) or any other provision of this Act, where any allegation of corruption against any public functionary or any grievance of maladministration by any public functionary comes to the knowledge or is brought to the notice of the Government, it may, if satisfied that it is necessary in public interest so to do, by order in writing, refer such allegation of corruption or grievance of maladministration or both to the Lokayukta for investigation and the Lokayukta either himself or through the Upa-Lokayukta shall investigate the same as if it were a complaint presented under this Act.

(3) Notwithstanding anything contained in sub-sections (1) and (2) above or any other provisions of this Act, the Lokayukta in his discretion, may investigate any complaint either himself or allot the same to the Upa-Lokayukta to investigate, subject however that the distribution of cases by the Lokayukta shall be equitable.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3) above or any other provisions of this Act, the Lokayukta may, for reasons to be recorded in writing, investigate any allegation which may be investigated by the Upa-Lokayukta.

(5) Notwithstanding anything contained in the above sub-sections or any other provisions of this Act, the Lokayukta or Upa-Lokayukta, as the case may be, may investigate any allegation against any person other than a public functionary in so far as he considers necessary so to do for the purpose of its investigation into any allegation against a public functionary.

(6) Notwithstanding anything contained in the above sub-sections or any other provisions of this Act, the Lokayukta, for reasons to be recorded, may, at any stage, withdraw any complaint pending before an Upa-Lokayukta, for investigation by himself.

(7) Notwithstanding anything contained in the above sub-sections or any other provisions of this Act, the Lokayukta may, at any stage, make over any complaint pending before him to an Upa-Lokayukta for disposal.

(8) Where two or more Upa-Lokayuktas are appointed under this Act, the Lokayukta may, by general or special order, assign to each of them, matters which may be investigated by them under this Act:

Provided that no investigation made by the Upa-Lokayukta under this Act or action taken or thing done by him in respect of such investigation shall be called in question on the ground only that such investigation related to a matter which is not assigned to him by such order.

(9) Any matter which the State Government may require the Lokayukta to enquire into and/or submit a report thereon with recommendations.

10. *Matters not subject to investigation.*— (1) Except as hereinafter provided, the Lokayukta shall not investigate,—

(i) any matter, in respect of which, a formal and public inquiry has been ordered with the prior concurrence of the Lokayukta;

(ii) any matter which has been referred for inquiry, under the Commission of Inquiry Act, 1952 (Central Act 60 of 1952);

(iii) any complaint involving an allegation of corruption made after the expiry of a period of five years from the date on which the matter or conduct complained against is alleged to have taken place:

Provided that the Lokayukta or Upa-Lokayukta, as the case may be, may entertain a complaint made after the expiry of the period specified in sub-clause (iii) above, if the complainant shows sufficient cause for not making the complaint within the said period:

Provided further that in respect of an investigation of a complaint involving allegations of corruption, once the complaint is entertained and is being investigated, nothing shall prevent the Lokayukta or Upa-Lokayukta from investigating and enquiring into acts of corruption which may pertain to any period prior to the said period of five years.

11. *Provisions relating to complaints.*— (1) Subject to the provisions of this Act, a complaint may be made under this Act, to the Lokayukta:

(a) In case of grievance, by the aggrieved person, and

b) In case of an allegation, by any person other than a public functionary

(2) Every complaint under sub-section (1) shall be made in such form and in such manner as may be prescribed and shall be accompanied by an affidavit in support of the allegations contained in the complaint. However, the Lokayukta or Upa-Lokayukta, as the case may be, may dispense with such affidavit in any appropriate case.

(3) Every complaint under sub-section (1), as well as, any schedule or annexure thereto shall be verified in the manner laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908), for the verification of pleadings.

(4) Notwithstanding anything contained in this Act or any other law for the time being in force, any letter written to the Lokayukta/Upa-Lokayukta by a person in police custody or in a jail or in any asylum or other place for insane persons, shall be forwarded to the Lokayukta/Upa-Lokayukta unopened and without delay but the police officer or any other person in charge of such jail, and Lokayukta or Upa-Lokayukta if satisfied that it is necessary so to do, treat such letter as a complaint made in accordance with the provisions of this section.

12. *Provision for holding preliminary inquiry*

(1) The Lokayukta or Upa-Lokayukta, on receipt of a complaint under section 11 or a reference under sub-section (2) of section 9 or in a case initiated on his own motion may, before proceeding to investigate such complaint or reference or case, as the case may be, make such preliminary inquiry as he deems fit for ascertaining whether there exists reasonable ground for conducting the investigation. If, on such preliminary inquiry he finds that,—

(a) the complaint is frivolous or vexatious or is not made in good faith; or

(b) there are no sufficient grounds for proceeding further; or

(c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies,

he shall record a finding to that effect and thereupon the matter shall be closed and the complainant, the public functionary and the

competent authority shall be informed accordingly.

(2) The procedure for conducting inquiry in respect of a complaint under sub-section (1) shall be such as the Lokayukta/Upa-Lokayukta deems appropriate in the circumstances of the case and in particular, the Lokayukta or Upa-Lokayukta may, if he deems it necessary so to do, call for the comments of the public functionary concerned.

(3) The Lokayukta or the Upa-Lokayukta may make such order as to the safe custody of documents relevant to the inquiry and investigation as he deems fit.

13. *Procedure in respect of detail investigations.*— (1) Where the Lokayukta/Upa-Lokayukta, after making the preliminary inquiry under section 12, finds that there are reasonable grounds for conducting a detail investigation and proposes to conduct such an investigation under this Act, he shall forward a copy of the complaint, alongwith its enclosures to the public functionary and the competent authority concerned and proceed to make a detailed investigation.

(2) Where the Lokayukta or Upa-Lokayukta, after making the preliminary inquiry in a case initiated on his own motion, proposes to conduct a detail investigation under this Act, he shall forward a statement setting out the grounds thereof, to the public functionary and the competent authority concerned.

(3) The Lokayukta or Upa-Lokayukta, shall afford to the public functionary concerned an opportunity to offer his comments on the complaint or the statement mentioned in sub-section (2).

(4) Save as aforesaid, the procedure for conducting any such investigation shall be such as the Lokayukta or Upa-Lokayukta, as the case may be, considers appropriate in the circumstances of the case and he shall have powers to regulate the same.

(5) The public functionary against whom investigation has to be made under this section and the complainant, if any, shall have the right to be represented in person or by counsel.

(6) In every detailed investigation under this Act, the Government shall be made a party and shall have the right to be represented by a counsel.

(7) The Lokayukta or the Upa-Lokayukta may, if he considers necessary so to do, having regard to the nature and circumstances of the case under investigation, appoint a counsel to assist him on such terms and conditions as may be prescribed.

(8) The Lokayukta or the Upa-Lokayukta may, at any stage, also permit—

(a) any witness; or

(b) any other person,

who claims that he is to be represented in person or by counsel, to take such part in the proceedings as the Lokayukta or the Upa-Lokayukta may, in the interest of justice, think fit.

14. *Issue of search warrants, etc.*— (1) Where in the consequence of information in his possession, the Lokayukta or Upa-Lokayukta,—

(a) has reasons to believe that any person,—

(i) To whom a summon or notice under this Act has been issued or is likely to be issued, may not produce or cause to be produced, or may tamper with any property, document or things which will be necessary or useful or relevant to any inquiry or other proceeding to be conducted by him;

(ii) Is in possession of any money, bullion, jewellery or other valuable articles or thing and such money, bullion, jewellery or other valuable articles or thing represents, either wholly or partly, income or property which has not been disclosed as required under any law or rule for the time being in force; or

(b) Considers that the purpose of any inquiry, investigation or other proceedings to be conducted by him will be served by a general search or inspection,

he may, by a search warrant, authorize any officer subordinate to him or any officer of the

Institution of Lokayutka or any person or agency referred to in section 8 or any Commissioner appointed by him under clause (e) of sub-section (2) of section 15, to conduct a search or carry out an inspection in accordance therewith and in particular to:—

- (i) Enter and search any building or place where he has reason to suspect that such property, document, money, bullion, jewellery or other valuable article or thing is kept;
- (ii) Search any person who is reasonably suspected of concealing about his person any articles for which search should be made;
- (iii) Break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by sub-clause (i), where the keys thereof are not available;
- (iv) Seize or seal any such property, document, money, bullion, jewellery or other valuable articles or thing found as a result of such search;
- (v) Place marks of identification on any property or document or make or cause to be made extracts or copies there from; or
- (vi) Make a note or an inventory of any such property, document, money, bullion, jewellery or other valuable article or thing.

(2) The provision of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) relating to search and seizure shall, so far as may be, apply to search and seizures under sub-section (1).

(3) A warrant issued under sub-section (1) shall, for all purpose, be deemed to be warrant issued by a Court under section 93 of the Code of Criminal Procedure, 1973 (Central Acts of 1974).

15. *Evidence.*—(1) Subject to the provisions of this section, for the purpose of any investigation, including the preliminary inquiry under this Act, the Lokayukta or Upa-Lokayukta may require any public functionary or any other person who, in his opinion, is able to furnish information or produce documents relevant to the investigation or inquiry, to furnish any such information or produce any such document.

(2) For the purpose of any such investigation, including preliminary inquiry, the Lokayukta or Upa-Lokayukta shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Requiring the discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any court or office;
- (e) Issuing commissions for the examination of witnesses or documents;
- (f) Such other matter as may be prescribed.

(3) Any proceeding before the Lokayukata or Upa-Lokayukta shall be deemed to be judicial proceeding within the remaining of sections 193 and 228 of the Indian Penal Code, 1960 (Central Act 45 of 1960).

(4) Subject to the provisions of sub-section (5), no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to the State Government or any public functionary, whether imposed by any enactment or by any rule of law, shall apply to the disclosure or information for the purpose of any investigation or inquiry, to any such privilege in respect of the production of the documents or the giving of evidence as is allowed by any rule of law in legal proceedings.

(5) No person shall be required or authorised by virtue of this Act, to furnish any such information or answer any such question or produce so much of any document,

- (a) As might prejudice the interests of the State of Goa or Union of India or the security or defence or international relations of India (including India's relations with the Government of any other country or with any other international organization);
- (b) As might involve the disclosure of proceedings of the cabinet of the State Government or any Committee of that Cabinet,

and for the purpose of this sub-section, a certificate issued by the Chief Secretary certifying that any information, answer or portion of a document is of the nature specified in clause (a) or clause (b), shall be binding and conclusive:

Provided that the Lokayukta or Upa-Lokayukta, as the case may be, may require any information or answer or portion of a document in respect of which a certificate is issued under this sub-section to the effect that it is of the nature specified in clause (a) or clause (b), to be disclosed to him in private for scrutiny, and if on such scrutiny the Lokayukta or Upa-Lokayukta, as the case may be, is satisfied that such certificate ought not to have been issued, he shall declare that certificate to be of no effect.

(6) Subject to the provisions of sub-section (4), no person shall be compelled for the purpose of investigation and inquiry under this Act, to give any evidence or produce any document, which he could not be compelled to give or produce in proceedings before a court.

(7) For prosecution for an offence of giving or fabricating false evidence under section 193 of the Indian Penal Code, 1860 (Central Act 45 of 1860), when such an offence is alleged to have been committed in, or in relation to any proceeding before the Lokayukta or the Upa-Lokayukta, as the case may be, the provisions of section 195 and 340 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall apply to the Lokayukta/Upa-Lokayukta as they apply in relation to the same offence, when such offence is alleged to have been committed in, or relation to, any proceeding in any Court subject to the modification that a complaint under section 340 shall be signed by the Lokayukta or Upa-Lokayukta or such officer of the Lokayukta as the Lokayukta or Upa-Lokayukta may appoint and for the purpose of the said sections 195 and 340 the Lokayukta is declared to be Court.

16. *Reports of Lokayukta.*— (1) If, after investigation of any complaint involving an allegation, the Lokayukta or Upa-Lokayukta, as the case may be, is satisfied that such allegation is substantiated either wholly or partly, he shall, by a report in writing, communicate his findings and recommendations and as far as possible along with the relevant documents, materials and other evidence to the competent authority concerned and a copy of the report regarding the findings

and recommendations shall be submitted to the Government.

1. A) *If, after investigation of any complaint involving a grievance, the Lokayukta or the Upa-Lokayukta, is satisfied that in consequence of mal administration by the public functionary, the complainant has sustained injustice or undue hardship, the Lokayukta or Upa-Lokayukta, shall by a report in writing recommend to the public functionary and the competent authority concerned, that such injustice or undue hardship shall be remedied or redressed in such manner and within such time as may be specified in the report.*

(2) The competent authority shall examine the report forwarded to it under sub-section (1), and within three months of the date of receipt of the report, intimate or cause to be intimated to the Lokayukta or Upa-Lokayukta, as the case may be, the action taken or proposed to be taken on the basis of the report.

(3) If the Lokayukta or Upa-Lokayukta, as the case may be, is satisfied with the action taken or proposed to be taken on his recommendations referred to in sub-section (1), he shall close the case under information to the complainant if any, the public functionary and the competent authority concerned; but where he is not satisfied and if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the competent authority concerned and the complainant, if any.

(4) The Lokayukta shall present annually a consolidated report on the administration of this Act to the Governor.

(5) On receipt of a report under sub-section (4), the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before the Legislative Assembly of Goa.

17. *Initiation of prosecution.*— If, after investigation into any complaint, the Lokayukta or Upa-Lokayukta, as the case may be, is satisfied that the public functionary has committed a criminal offence and that he should be prosecuted in a court of law for such an offence, then he may pass an order to the effect and the appropriate authority or agency shall initiate prosecution of the public functionary concerned, and if prior sanction of any authority is required for such prosecution then, notwithstanding anything contained in any law, for the time being

in force, such sanction shall be deemed to have been granted by the appropriate authority on the date of such order.

18. *Secrecy of Information.*— (1) Any information obtained by the Lokayukta or the Upa-Lokayukta or the members of his staff or any other officer, person or agency referred to in sub-section (5) of section 8, in the course of, or, for the purpose of any preliminary enquiry or any investigation under this Act, and any evidence recorded or collected in relation to such information, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872 (Central Act 1 of 1872), no court shall be entitled to compel the Lokayukta or the Upa-Lokayukta or any such member, officer, person or agency or any public functionary to give evidence relating to such information or to produce the evidence so recorded or collected.

(2) Nothing in sub-section (1) shall apply to the disclosure of such information or evidence,

- (a) for the purpose of any report to be made under this Act, or for the purpose of any action or proceeding to be taken on such report; or
- (b) for the purpose of any proceeding, for an offence under the Official Secrets Act, 1923 (Central Act 19 of 1923), or for an offence of giving or fabricating false evidence under section 193 of the Indian Penal Code, 1860 (Central Act 45 of 1860);
- (c) for such other purpose as may be prescribed.

(3) The Lokayukta or the Upa-Lokayukta, as the case may be, may, at his discretion, make available, from time to time, the substances of cases closed or otherwise disposed off by him which may appear to him to be of a general, public, academic, or professional interest in such manner and to such persons as he may deem appropriate.

19. *Power to punish for contempt.*— (1) The Lokayukta or the Upa-Lokayukta shall have and exercise the same jurisdiction, powers, authority in respect of contempt of itself as a High Court has, and may exercise, and for his purpose, the provisions of the Contempt of Courts Act, 1971 (Central Act 70 of 1971), shall have effect subject to the modification that—

- (a) the references therein to the High Court shall be construed as including a reference to the Lokayukta or the Upa-Lokayukta, as the case may be;
- (b) section 18 and sub-sections (2) and (3) of section 19 of that Act shall not apply to the Lokayukta or the Upa-Lokayukta; and
- (c) the reference in the provision of sub-section (1) of section 19 of that Act to Judicial Commissioner in an Union Territory shall be construed as including a reference to the Lokayukta or the Upa-Lokayukta, as the case may be.

(2) The Lokayukta or the Upa-Lokayukta shall be deemed to be Court within the meaning of the Contempt of Courts Act, 1971 (Central Act 70 of 1971).

20. *Costs.*— (1) The Lokayukta or the Upa-Lokayukta, as the case may be, in case the allegation made in the complaint is found to be false or vexatious to the knowledge of the complainant, order the complainant to pay costs/compensation of not more than rupees twenty-five thousand, to the public functionary against whom the allegation has been made.

(2) The Lokayukta or the Upa-Lokayukta, as the case may be, may, if he is satisfied that all or any of the allegations made in the complaint against the public functionary have or has been substantiated, either wholly or partly, order the public functionary, to pay such amount of costs as may be specified in the order to the complainant and issue a certificate of recovery in respect of the amount so specified.

(3) Any person in whose favour a certificate is issued under sub-section (2) may apply to the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person against whom, a certificate is issued has a place of residence or business for recovery of the amount specified in the certificate and such Court shall thereupon execute the certificate, or cause the same to be executed, in the manner and by the same procedure as if it were a decree for the payment of money passed by itself in a suit.

21. *Protection of action taken under the Act.*— (1) No suit, prosecution or other legal proceeding shall lie against the Lokayukta or the Upa-Lokayukta or against any officer, employee,

agency or person referred to in section 8 in respect of anything which is in good faith done or intended to be done under this Act.

(2) No proceeding of the Lokayukta or Upa-Lokayukta shall be held invalid for want of form and, except on the ground of jurisdiction, no proceeding or decision of the Lokayukta or Upa-Lokayukta shall be liable to be challenged, reviewed or called in question in any court.

22. *Intentional insult or interruption to, or bringing into disrepute the Lokayukta or Upa-Lokayukta.*— (1) Whoever intentionally offers any insult or causes any interruption or obstruction to the Lokayukta or Upa-Lokayukta while the Lokayukta or Upa-Lokayukta is conducting any inquiry or investigation under this Act, shall, on conviction, be punished with simple imprisonment for a term, which may extend to six months, or with fine or with both.

(2) Whoever, by words spoken or intended to be read, makes or publish any statement or does any other act, which is calculated to bring the Lokayukta or Upa-Lokayukta into disrepute, shall, on conviction, be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(3) The provisions of section 199 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (2) of said section 199, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor, except with the previous sanction,—

(a) in case of an offence against the Lokayukta, of the Lokayukta;

(b) in case of an offence against Upa-Lokayukta, of the Upa-Lokayukta concerned.

23. *Public functionary to submit property statements.*— (1) Every public functionary falling within the purview of the Lokayukta for the purpose of investigation under this Act, other than the officer referred to in clause (0) of section 2 and sub-clauses (xi) and (xii) of clause (q) of section 2, shall, within six months from the date he enters upon his office and thereafter before

the 30th June of every year, submit to the Lokayukta in the prescribed form a statement of his assets and liabilities held by him or by any person on his behalf and those of the members of his family. The public functionary falling under clause (0) of section 2 and sub-clause (xi) and (xii) of clause (q) of section 2 shall file statement before respective authorities as to required under their respective service rules, who will act on the same in accordance with those rules.

(2) If no such statement is received by the Lokayukta from any such public functionary within the time specified in sub-section (1), the Lokayukta shall make a report to that effect to the competent authority and send a copy of the report to the public functionary concerned. If within two month of such report the public functionary concerned does not submit the statement of his assets and liabilities as above mentioned, the Lokayukta shall publish or cause to be published the names of such public functionaries in two newspapers having wide circulation in the State with a report to the Governor who may then place the matter before the Legislative Assembly.

24. *Protection.*— (1) No suit, prosecution or other legal proceeding shall lie against the Lokayukta or Upa-Lokayukta or against any member of the staff of the office of Lokayukta or any officer, agency or person referred to in sub-section (5) of section 8, in respect of anything which is done or intended to be done in good faith under this Act.

(2) Save as otherwise provided in this Act, except on the grounds of jurisdiction, no proceedings, decision, order, or any report of the Lokayukta or Upa-Lokayukta, as the case may be, including any recommendation made thereunder, shall be liable to be challenged, reviewed, quashed, modified or called in question in any manner whatsoever in any court or tribunal.

25. *Bar of prosecution on allegation not proved or not substantiated or grievance not sustaining injustice or undue hardship.*— Notwithstanding anything contained in any other law for the time being in force, where, on an investigation in respect of a public functionary, the Lokayukta or the Upa-Lokayukta, has held that any allegations made in the complaint have not been proved or substantiated, or that any grievance made in the complaint has not sustained injustice

or undue hardship to the complainant, as the case may be, no prosecution shall lie on any complaint, report, information or otherwise and no court shall take cognizance of any offence on the basis of the same or substantially the same allegations or grievance as in the complaint as the case maybe or substantially the same allegations or grievance as in the complaint.

26. *Publication of Reports.*— Notwithstanding anything contained in sections 16 and 20, the Lokayukta may, in the interest of public or in the interest of a person, department or instrumentality of the State, publish reports relating generally to his exercise of powers and performance of functions and discharge of duties under this Act or to any particular case investigated by him or Upa-Lokayukta, whether or not the matters to be dealt with in the reports have been the subject matter of a report laid before the State Legislature under this Act.

27. *Conferment of additional functions on Lokayukta or Upa-Lokayukta.*—(1) The Governor may, order after consultation with the Lokayukta, by order, confer on the Lokayukta or Upa-Lokayukta, such additional functions in relation to the redressal of grievances, atrocities and eradication of corruption as may be specified in the order.

(2). The Governor may, order after consultation with the Lokayukta, by order, confer on the Lokayukta or Upa-Lokayukta, such powers of supervisory nature over agencies, authorities or officers set up, constituted or appointed by the State Government for the eradication of corruption as may be specified in the order.

(3) The Governor may, by order in writing and subject to such conditions and limitations as may be specified in the order, require the Lokayukta or Upa-Lokayukta, to investigate any allegation or grievance (being an allegation or grievance in respect of which a complaint may be made under this Act to the Lokayukta or Upa-Lokayukta) and notwithstanding anything contained in this Act, the Lokayukta or Upa-Lokayukta, as the case may be, shall comply with such order.

(4) When any additional functions are conferred on the Lokayukta or the Upa-Lokayukta under sub-section (1) or when the Lokayukta or the Upa-Lokayukta, is to investigate any allegation under sub-section (3), the Lokayukta or the

Upa-Lokayukta shall exercise the same powers and discharge the same functions, as he would have exercised and discharged in the case of any investigation made on a complaint involving an allegation and the provisions of this Act shall apply accordingly.

28. *Bar to inquiries.*— No formal or open inquiry into any allegation or grievance against any public functionary in respect of which a complaint has been presented under section 11 shall be made at the instance of the Government under the Commission of Inquiry Act, 1952 (Central Act 60 of 1952), or by any other order or resolution of the Government, but nothing herein contained shall be construed as affecting any right or power of any other person or authority under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), or under any other law for the time being in force, or as affecting the constitution of, or the continuance of the functioning of or exercise of powers by any Commission or Commission of Inquiry appointed before the commencement of this Act.

29. *Pendency of case not to bar proceeding under this Act.*— The pendency of any civil or criminal case in the High Court or any court subordinate thereto in respect of any allegation or grievance shall not bar the scrutiny, investigation or inquiry of or into that allegation under this Act, and no such scrutiny, investigation or inquiry shall be deemed to amount to contempt of such Court.

30. *Power to delegate.*— The Lokayukta or the Upa-Lokayukta may, by a general or special order in writing, direct that any power conferred or duties imposed on him by or under this Act (except the power to make investigation or to report to the competent authority or the power to punish for contempt) may also be exercised or discharged by such officers, employees, agencies referred to in section 8 in the menyy as may be specified in the order;

31. *Lokayukta to make suggestions.*— The Lokayukta or the Upa-Lokayukta, if in the discharge of its functions under this Act, notices a practice or procedure which in its opinion affords an opportunity for corruption, it may bring it to the notice of the Government and may suggest such changes in the said practice or procedure as it may deem fit.

32. *Power of the State Government to make the rules.*— (1) The Government may, by

notification, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the competent authority to be prescribed under sub-clause (iv) of clause (d) of section 2;
- (b) the matters in respect of which the Lokayukta or Upa-Lokayukta shall have powers of a civil court;
- (c) the other purpose in relation to disclosure of any information or evidence to be prescribed under clause (c) of sub-section (2) of section 18;
- (d) the form in which complaints may be made under section 11; and the affidavits which may accompany such complaint, and the fees if any which may be charges in respect thereof;
- (e) the conditions of service of the Lokayukta and the Upa-Lokayukta

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

33. *Power of Lokayukta to make regulations.*— (1) The Lokayukta may, by notification and with prior approval of the Government make such regulations, as he may deem necessary for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulation made with prior approval of the Government may provide for all or any of the following matters, namely:—

- (a) normal working hours of the office of the Lokayukta and holding of sitting of the

Lokayukta and Upa-Lokayukta, outside normal working hours;

- (b) holding of sittings of the Lokayukta and Upa-Lokayukta at places other than the place of ordinary sittings;
- (c) procedure which may be followed by the Lokayukta and Upa-Lokayukta for conducting proceedings including inquiry and investigation;
- (d) such forms and notices as may be necessary in the opinion of the Lokayukta for carrying out the inquiry and investigation; and
- (e) matters relating to staff, its appointment, conditions of service, etc.

34. *Removal of doubts.*— For the removal of doubts, it is hereby declared that nothing in this Act shall be construed to authorize the Lokayukta or Upa-Lokayukta to investigate any complaint against:—

- (i) the Chief Justice or any Judge of the High Court, or a Judicial Officer of Subordinate Courts within the meaning of Chapter VI of Part VI of the Constitution of India;
- (ii) any Officer or servant of any Court referred to in clause (i);
- (iii) the Chairman or a Member of the Goa Public Service Commission and any member of its staff;
- (iv) the Election Commissioners and the Regional Commissioners referred to in Article 324 of the Constitution of India and the Chief Electoral Officer of Goa;
- (v) the Speaker and the Deputy Speaker and the Staff of the Goa Legislative Assembly and the staff of the Goa Legislature Secretariat;
- (vi) functionaries appointed under Articles 323-A and 323-B of the Constitution of India or any member of their staff; and
- (vii) any member of the staff of Governor's Secretariat.

35. *Power to remove difficulties.*— (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for the purpose of removing the difficulty.

(2) No order under sub-section (1) shall be made after the expiration of a period of two years from the commencement of this Act.

(3) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the order or decides that the order should not be made, the order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order.

36. *Repeal and savings.*— (1) On and from the date of coming into force of this Act, the *Goa Public Men's Corruption (Investigations and Inquiries) Act, 1988 (Goa Act 7 of 1991)*, shall stand repealed.

(2) Notwithstanding such repeal,—

(a) anything done or any action taken under the said Act shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions of this Act, and shall continue to be in force unless and until it is superseded under the provisions of this Act.

(b) all notices, complaints, inquiries and investigations or other proceedings pending before the Commission under the repealed Act shall stand transferred to and be continued by the Lokayukta or Upa-Lokayukta, as the case may be, under the provisions of this Act as if it were commenced before him under this Act.

(3) The provisions of this Act shall be in addition to the provisions of any other enactment or any

rule of law under which any remedy in any other manner is available to a person making a complaint under this Act, and nothing in this Act shall limit or affect the right of such person to avail of such remedy.

Statement of Objects and Reasons

In pursuance of the policy of the Government to eradicate corruption and ensure highest standards of efficiency and integrity at all levels in the administration, it is necessary to set up a machinery to investigate and enquiry into the complaints of corruption against public men. Accordingly the Goa Public Men's Corruption (Investigations and Inquiries) Act, 1988 had been enacted by the Legislative Assembly and was implemented by the Government. It is now felt that in order to strengthen the same and to bring it in line with All India pattern of Lokayukta institution covering both, allegation of Corruption and grievances of maladministration and also as suggested by the Committee of All India Conference of Lokayuktas and Upa-Lokayukta, a draft Bill to that effect called "The Goa Lokayukta Bill, 2003" has therefore been introduced. The Bill seeks to repeal the Goa Public Men's Corruption (Investigations and Inquiries) Act, 1988. The Bill authorizes the constitution of an institution of Lokayukta as mentioned under section 3 thereof, to investigate and inquire into the complaints of allegation of corruption against public functionaries as well as the grievances of maladministration by them. The scope of the bill will extend not only to the elected representatives of the State Legislative including the Chief Minister and the Ministers, but also the Public Sector Undertakings, co-operative organizations, office bearers of the recognized political parties, trade unions, educational institutions including Government aided institutions, private schools and colleges, etc. The alleged acts of corruption which have taken place more than 5 years prior to the complaint will not be covered under this Bill. Provision has also been made to award cost of not more than Rs. 25,000/- by way of fine/compensation to discourage false and malicious complaints. Another salient feature of the Bill is that it provides for submission of periodic property returns by the public men covered under the Bill.

This Bill seeks to achieve a above objects.

Financial Memorandum

Clause 3 of the Bill for the constitution of a Lokayukta and as an when need arises appointment of one more Upa-Lokayuktas. Clause 6 of the Bill envisages that the status, salary, allowances and pension of the Lokayukta or Upa-Lokayukta shall be the same as that of the Judge of the High Court.

Clause 8 provides that the Lokayukta shall have a Secretary and such other officers and employees as may be determined by the Governor in consultation with the Lokayukta. There will not be expenditure of non-recurring nature considering the skeletal continuing staff of the already established office, office equipments, furniture, that the Goa Public Men's Corruption (Investigation and Inquires) Act, 1988. There would be recurring expenditure on the salary, allowances and other perquisites of Lok Ayukta.... Since the former Commission was a three Member Commission and considering the fact that under the present Act there will be only one Lokayukta, there will a saving on salaries, allowances, etc. to that extent. Exact amount cannot be quantified at this stage.

Memorandum regarding Delegated Legislation

Clause 32 of the Bill empowers the Government to make rules for the purpose of carrying into effect the provisions of proposed enactment.

Clause 33 (i) of the Bill empowers the Lokayukta to make regulations by notification with prior approval of the Government.

Clause 35 (i) of the Bill empowers the Government to make an Order for the purpose of removing the difficulty arisen in giving effect to the provisions of the proposed enactment.

These delegations are of normal character.

Panaji,
25th April, 2003.

MANOHAR PARRIKAR
Chief Minister

Assembly Hall,
Porvorim-Goa.
25th April, 2003.

S. A. NARVEKAR
Secretary to Legislative
Assembly of Goa.